



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

Gikonyo & another v Kiambu Dandora Farmers Co. Ltd & 4 others (Civil Suit E092 of 2020) [2022] KEELC 4761 (KLR) (8 September 2022) (Ruling)

Neutral citation: [2022] KEELC 4761 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
CIVIL SUIT E092 OF 2020
EK WABWOTO, J
SEPTEMBER 8, 2022

BETWEEN

JOSEPH CHEGE GIKONYO 1ST PLAINTIFF

GICHE LIMITED 2ND PLAINTIFF

AND

KIAMBU DANDORA FARMERS CO. LTD 1ST DEFENDANT

CABINET SECRETARY, MINISTRY OF INTERIOR & CO-ORDINATION OF NATIONAL GOVERNMENT 2ND DEFENDANT

INSPECTOR GENERAL OF POLICE 3RD DEFENDANT

DEPUTY COUNTY COMMISSIONER, EMBAKASI SUB-COUNTY 4TH DEFENDANT

ATTORNEY GENERAL 5TH DEFENDANT

RULING

1. The plaintiffs moved the court through the notice of motion dated July 13, 2022 seeking the following orders;
 - a) Spent.
 - b) That the honourable court be pleased to grant the plaintiffs/applicants leave to file further evidence and documents in support of the case.
 - c) That the honourable court be pleased to give further directions on further hearing of the suit.
 - d) That the costs of and incidental to this application be costs in the cause.



2. The application is supported by an affidavit sworn by Joseph Gikonyo Chege, the 1st plaintiff who is also a director of the 2nd plaintiff. The said affidavit was sworn on July 13, 2022. He deposed that the plaintiffs had testified on May 24, 2022 and the matter is scheduled for further hearing on October 12, 2022 and that he has come across further relevant evidence that will assist this court reach a just and fair determination of the matter.
3. He further deposed that he seeks leave to adduce additional documents on behalf of the plaintiffs which documents are listed at paragraph 7 of his supporting affidavit and annexed as annexure 'JCG – 1'. He went on to state that there will be no prejudice to the defendants if the said documents are adduced as evidence in this suit and further that the documents are consistent with the evidence already filed and or adduced by the parties and they do not in any way seek to prejudice or steal a march against them.
4. This court pursuant to its directions issued on July 20, 2022, directed the application to be canvassed by way of written submissions. The applicants were required to file and serve their written submissions by August 2, 2022 while the respondents had until August 16, 2022 to file and serve their response and written submissions. As per the court record, the applicants complied and filed their written submissions dated August 2, 2022 but the 1st defendant filed a replying affidavit sworn on August 26, 2022 which affidavit was filed on August 29, 2022. The court's directions issued on July 20, 2022 were quite clear to the parties that any response and submissions that shall be filed out of the stipulated timelines would not be considered as part of the court record. It is worth noting that the respondents were expected to file their response and written submissions by August 16, 2022. The same was not complied with and the replying affidavit sworn by Joseph Karanja on August 26, 2022 on behalf of the 1st respondent is expunged from the court record in line with this court's order issued on July 20, 2022.
5. I have carefully considered the application and the affidavit filed in support together with the written submissions filed by the applicants. The applicants have invoked order 18 rule 10 of the Civil Procedure Rules and section 1 A, 1 B & 3A, 63(e) of the Civil Procedure Act and section 146 of the Evidence Act. They urge the court to grant them leave to file further evidence and documents in support of the case. The issue for the court to determine in the instant matter is whether the applicants have provided a reasonable and justifiable basis for the court to exercise its discretion to allow them adduce further evidence. The discretion of the court cannot be exercised whimsically but ought only to be exercised judiciously. A basis for the exercise of discretion has to be laid by the party inviting the court to exercise its discretion. In the present case the question for the court to answer is whether the applicants have satisfied the threshold by providing a rational basis for the court to allow the calling of further evidence.
6. A perusal of the court record shows that on December 2, 2021 the applicant's requested and were subsequently granted leave to file further documents in form of a survey report and supplementary witness statement. The same were filed and the matter proceeded for hearing on May 24, 2022 wherein three witnesses testified on behalf of the plaintiffs and their case was closed. After the close of the plaintiffs case, the defence case commenced thereafter and the 1st defendant's witness testified and the matter was subsequently adjourned for further defence hearing on October 12, 2022.
7. In the plaintiffs/applicants application dated July 13, 2022, the applicants have not sought for any orders seeking the re-opening of their case before seeking leave to adduce additional evidence. The plaintiffs have equally not stated anywhere in the supporting affidavits that they had closed their case. I find this mischievous and only meant to conceal the current status of the matter. Parties are ordinary bound by their pleadings and the court cannot grant what has not been pleaded nor prayed for.
8. The plaintiffs closed their case on May 24, 2022. Prior to the said date, they had been granted leave to file any additional document they intended to use during trial, they additionally filed a surveyors'



report and supplementary witness statement. The court cannot allow the production of additional evidence by a party who had closed his case and has equally not sought for re-opening of the same. The matter is now at the defence hearing.

9. In the premises and for all the above reasons, I am not persuaded that the application is merited. I have no option but to dismiss the same with no orders as to costs. The matter shall proceed for further defence hearing on October 12, 2022 as earlier scheduled.

DATED, SIGNED AND DELIVERED AT NAIROBI BY EMAIL THIS 8TH DAY OF SEPTEMBER 2022.

E.K. WABWOTO

JUDGE

